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Supreme Court of the United States

October Term 19[redacted]63

No. [redacted]4

ROBERT WILLIAMS,
Petitioner,

vs.

STATE OF NORTH CAROLINA
Respondent.

BRIEF OF THE RESPONDENT, STATE OF NORTH CAROLINA, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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Supreme Court of the United States

October Term 1960

No. 915

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BRIEF OF THE RESPONDENT, STATE OF NORTH CAROLINA, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

OPINION BELOW

The opinion of the Supreme Court of North Carolina, in this case, is reported as STATE v. ROBERT WILLIAMS, 253 N.C. (No. 6, N.C. Advance Sheets—Feb. 15, 1961) 804, 117 S.E. 2d (No. 8—Feb. 23, 1961) 824. The case on which the Supreme Court of North Carolina relied as precedent is reported as STATE v. AVENT, et als., 253 N.C. (No. 6, N.C. Advance Sheets—Feb. 15, 1961) 580, 118 S.E. 2d (No. 1, March 2, 1961) 47. The opinion of the Supreme Court of North Carolina in this case also appears in the Petitioner's Appendix A at p. 14, and the opinion in the Avent case appears in the same Appendix at p. 18 (Petitioner's Appendix

B). The Judgment of the Superior Court of Union County, North Carolina, is not officially reported but appears in the State Record at p. 4. The Judgment of the Supreme Court of North Carolina, issued as a result of the opinion, appears in Petitioner's Appendix C at p. 18.

JURISDICTION

The Petitioner invokes the jurisdiction of the Supreme Court of the United States pursuant to 28 U.S.C. 1257 (3). The Respondent, North Carolina, denies that this Court has any jurisdiction over this case.

QUESTIONS PRESENTED

The Respondent, North Carolina, will oppose the granting of the Writ herein sought by the Petitioner on the basis of the questions presented by the Petitioner as set forth on p. 2 of Petitioner's Petition and Brief in support of Petition.

CONSTITUTIONAL PROVISION AND STATUTE INVOLVED

The Petitioner invokes the Fourteenth Amendment to the Constitution of the United States, and in addition the Petitioner attacks the validity of Section 14-134 of the General Statutes of North Carolina, the pertinent portion of said Statute being as follows:

"G.S. 14-134. Trespass on land after being forbidden; license to look for estrays. — If any person after being forbidden to do so, shall go or enter upon the lands of another, without a license therefor, he shall be guilty of a misdemeanor, and on conviction, shall be fined not exceeding fifty dollars, or imprisoned not more than thirty days."

RESPONDENT'S STATEMENT OF THE CASE

The official record of the proceedings in this matter, which were before the Supreme Court of North Carolina, have been

certified to this Court and will hereafter be referred to as STR as an abbreviation for State Record.

The Petitioner was originally tried in the Recorder's Court of Union County for a violation of the above quoted Statute, was convicted and appealed to the Superior Court of Union County. In the Superior Court Petitioner was tried before a Judge and a Jury, on the same charge, and was again convicted. The warrant on which Petitioner was tried appears on STR-2. At the trial in the Superior Court the Petitioner filed a Motion for Judgment as of Nonsuit upon Constitutional grounds (STR-5) and it is admitted by Respondent that this is an approved procedural method of raising constitutional questions in North Carolina.

The Respondent contends that the evidence shows the following:

The Jones Drug Co., a corporation, operates a retail drug store on the corner of Main and Franklin Streets in the Town of Monroe, North Carolina (STR-8). In the drug store there are 11 stools and a soda fountain where sandwiches, soft drinks, coffee and food articles are sold (STR-8,12). On March 11, 1960, between 5:00 and 5:30 o'clock Petitioner and some 10 or 11 teen-age boys came into the drug store and sat down at the fountain (STR-8,9,10,12). It is clear (STR-17) that this was a group acting by agreement, and Respondent contends that the purpose was to create a test case.

The Petitioner and the boys with him sat down at the fountain (STR-8,9) and it is not clear that they ever asked for any service at this time. W. R. May, Secretary-Treasurer and part owner of the store, went over to the fountain area and asked Petitioner to leave (STR-8,9), telling him to leave several times. As to the number of times Petitioner was told to leave the store see STR-10,11. Mr. Dolan Jones, President of the drug company, also told Petitioner to leave (STR-12). The Petitioner, and the boys with him were clearly told that they would not be served at the fountain (STR-8,9,12). The Petitioner was then told that unless he left the store a

trespass warrant would be procured for him (STR-9) and Mr. May (Secretary-Treasurer) went out to get the warrant (STR-9). The boys with Petitioner left the store (STR-9, 11,12) but the Petitioner continued to stay in the store, then left the store and came back again (STR-12,13). The Petitioner then asked for cigarettes and was told to leave (STR-11,13). After a short while Petitioner then left the store and was arrested shortly thereafter. The Petitioner and the boys with him are colored people.

ARGUMENT

I

THE ADMINISTRATION AND INTERPRETATION OF THE STATE STATUTE.

The Petitioner alleges in his Brief (p.8) that he was convicted solely because he is a Negro. This is not correct in the sense alleged and this Court is referred to the case of STATE v. AVENT, et als., 253 N.C. (No. 6, N.C. Advance Sheets—Feb. 15, 1961) 580, 118 S.E. 2d (No. 1, March 2, 1961) 47. In the Avent case two members of the white race were convicted along with the colored defendants. The Petitioner cannot allege and show that as a habitual practice over the years the Statute (G.S. 14 - 134) has been applied as against the colored race and not against the white race. In this connection the Respondent invites an inspection of the decisions of the Supreme Court of North Carolina relating to this Statute. An inspection of the State Record will show that Petitioner never at any time produced any evidence tending to show that the Statute had been applied unequally as between the two races and it was not, therefore, necessary for the Court below to assert that "the trespass statute is applied equally against Caucasians." (Petitioner's Brief p.10) Such a question must be properly presented and passed upon by the highest appellate court of a state and this was not done (EDDLEMAN v. CALIFORNIA, 344 U.S. 357, 97 L.ed. 387; WHITNEY v. CALIFORNIA, 274 U.S. 357, 47 S.Ct. 641, 71 L.ed. 1095).

This Court will find that the Statute (G.S. 14 - 134) has been passed upon by the Supreme Court of North Carolina in many cases and Respondent refers the Court to these decisions (STATE v. CLYBURN, 247 N.C. 455, 101 S.E. 2d 295; STATE v. COOKE, et als., 246 N.C. 518, 98 S.E. 2d 885; STATE v. GOODSON, 235 N.C. 177, 69 S.E. 2d 242; ARMSTRONG v. ARMSTRONG, 230 N.C. 201, 52 S.E. 2d 362; LEE v. STEWART, 218 N.C. 287, 10 S.E. 2d 804; STATE v. BAKER, 231 N.C. 136, 56 S.E. 2d 424; See also many cases cited in annotation to Section 14 - 134 in the General Statutes of North Carolina and the 1959 Supplement thereto).

Putting to one side the constitutional question as to the vagueness of the Statute, the Federal Courts will accept the construction or interpretation of the Statute by the highest appellate court of the State (AMERICAN FEDERATION OF LABOR v. WATSON, 327 U.S. 582, 90 L.ed. 873, 66 S.Ct. 761; PHILLIPS v. UNITED STATES, 312 U.S. 246, 85 L.ed. 800, 61 S.Ct. 480; HIGHLAND FARMS DAIRY v. AGNEW, 300 U.S. 608, 81 L.ed. 835, 57 S.Ct. 549).

II

THE STATUTE IS NOT INVALID BECAUSE OF VAGUENESS.

The specifications of Petitioner's argument on this point add up to the usual contention that the Statute does not prescribe any ascertainable standard of criminal conduct. The answer to this will be found in such cases as ROTH v. UNITED STATES, 354 U.S. 476, 1 L.ed. 2d 1498, 77 S.Ct. 1304 in which case the California Statute on Obscenity was held to be valid as against a charge of unconstitutional vagueness. On p. 1511 of 1 L.ed. 2d this Court cites many cases which support the proposition that impossible standards of definition are not required and that it is sufficient if the language "conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices."

A good example is 18 USCA 242 which reads as follows:

> "Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects, or causes to be subjected, any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution and laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000.00, or imprisoned not more than one year, or both."

This Federal Statute was upheld against an attack based on unconstitutional vagueness in SCREWS v. UNITED STATES, 325 U.S. 91, 89 L.ed. 1495, 65 S.Ct. 1031. To the same effect see: BEAUHARNAIS v. ILLINOIS, 343 U.S. 250, 72 S.Ct. 725, 96 L.ed. 919; COLE v. ARKANSAS, 338 U.S. 345, 70 S.Ct. 172, 94 L.ed. 155; WILLIAMS v. UNITED STATES, 341 U.S. 97, 71 S.Ct. 576, 95 L.ed. 774; UNITED STATES v. WURZBACH, 280 U.S. 396, 50 S. Ct. 167, 74 L.ed. 508.

G.S. 14 - 134 which is here under attack is certainly as specific as G.S. 14 - 126 which reads as follows:

> "No one shall make entry into any lands and tenements, or term for years, but in case where entry is given by law; and in such case, not with strong hand nor with multitude of people, but only in a peaceable and easy manner; and if any man do the contrary, he shall be guilty of a misdemeanor."

This happens to be 5 Richard II, c. 8 and the English people thought it was definite enough to be a valid rule of law.

We do not understand Petitioner's argument that there is no evidence whatsoever to support his conviction. There is

ample evidence as the State Record will show and the sufficiency of the evidence to be presented to the jury presents no Federal question (BELL TEL. CO. v. PENNSYLVANIA PUBLIC UTILITY COMMISSION, 309 U.S. 30, 84 L.ed. 563; AMERICAN RY. EXPRESS CO. v. KENTUCKY, 273 U.S. 269, 71 L.ed. 639). Clearly no rights guaranteed by the First Amendment to the Constitution of the United States have been violated. The provisions of G.S. 14 - 134 are plain and unambiguous, and the Statute has long existed in North Carolina. The interpretation that a person should leave premises when directed to do so by the owner was made by the Supreme Court of North Carolina some considerable period of time before the Petitioner was indicted.

III

PETITIONER'S CONSTITUTIONAL RIGHTS UNDER THE FOURTEENTH AMENDMENT HAVE NOT BEEN VIOLATED.

The Petitioner admits in his brief (Petitioner's Brief pp. 8,9) that present legal authority is contrary to his position. Petitioner simply says that because we are living in a new age these legal authorities should be re-examined and invalidated. So far as the Fourteenth Amendment is concerned the Petitioner asks that all private enterprises be declared to be quasi agents of the State so that the action of the managers of private enterprises becomes state action under the Fourteenth Amendment. Up to this time this has not been the accepted rule of law.

The Respondent cannot state its argument and contentions any better than they are stated by Mr. Justice Parker of the Supreme Court of North Carolina in the case of STATE v. AVENT, et als., 253 N.C. (No. 6, N.C. Advance Sheets—Feb. 15, 1961) 580, 118 S.E. 2d (No. 1, March 2, 1961) 47, and we adopt the concepts stated by Justice Parker and the cases or legal authorities cited by him in support of same.

We are not here concerned with those enterprises affected

with a public interest and which are regulated by public service commissions because the regulation of this class of business rests on a different basis. Actually the Petitioner admits (Petitioner's Brief pp. 9,10) that if his theory of this case is sound then a storekeeper who does not wish to serve certain patrons, his property not being protected under the law of trespass, will be left to his own devices. This means that in many cases there will be a resort to physical violence and we are brought back to the law of the jungle.

The Petitioner is actually asking this Court to bring about by judicial fiat the socialization of private property. If the storekeeper decides to sell his commodity to some groups at a higher price than to others then this would also be an unconstitutional discrimination. All property in a sense is owned and rights thereto are protected under the aegis of social organization but this does not mean that private property and private ownership is thereby communized. If the Petitioner's theory is adopted by this Court then the next step will be that no group can organize a private club with members of their own choosing and the same would be true of a lodge or any organization for its property is owned and held under the protection of the State. The fact that a storekeeper invites the general public into his store does not mean that he cannot choose his patrons or the articles he will sell or not sell, at least it should not.

The component parts of the Statutes (G.S. 14 - 134) do not relate to race or color. Its provisions are applicable and available to persons of all races and groups. The colored man can invoke it and is protected in excluding such patrons, as he desires, from his business or store and therefore the power of the State is equally exerted. The use of the power of the State to enforce non-discriminatory laws is not such state action as is condemned by the Fourteenth Amendment.

CONCLUSION

The Respondent, North Carolina, therefore, contends that the Petitioner has not brought his case within the purview

of the rulings of this Court which allows his case to be considered upon application for certiorari because of alleged constitutional questions asserted by him. The Respondent, therefore, requests this Court to deny the application of Petitioner.

Respectfully submitted,

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